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Initiated Legislation (as enacted)

PUBLIC ACT 337 of 2018

Date Completed: 10-1-18

CONTENT

Public Act 337 of 2018, initiated by petition and adopted by the Legislature, enacts the "Improved Workforce Opportunity Wage Act" ("initiated law") to do the following:

- **Increase the standard minimum wage hourly wage to \$10.00, beginning on January 1, 2019, and further increase the minimum wage from \$10.00 to \$12.00.**
- **Require annual adjustments in the standard minimum wage, beginning January 1, 2023, to reflect changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers.**
- **Increase the minimum hourly wage for tipped employees, from 38% to 48%, of the standard minimum wage, beginning January 1, 2019, and, each year afterward, increase the minimum wage for those employees until it is 100% of the standard minimum wage.**
- **Specify that the Act would supersede any acts or parts of acts inconsistent with or in conflict with the Act, only to the extent of the inconsistency or conflict.**

The initiated law includes provisions pertaining to overtime and compensatory time off, as well as language that prescribes the minimum wage for training individuals under 20 years of age, apprentices, and individuals with disabilities, and minors; the membership, meetings, and powers of the Wage Deviation Board; and penalties for discrimination, payment of inadequate wages, and other violations of the Act. These provisions are substantially the same as those under the Workforce Opportunity Wage Act.

The initiated law will take effect on the 91st day after the Legislature adjourns sine die.

Standard Minimum Wage Increase

The Workforce Opportunity Wage Act prescribes a standard minimum hourly wage of \$9.25. The initiated law retains that rate through December 31, 2018, and increases the minimum wage as follows:

- Beginning January 1, 2019: \$10.00
- Beginning January 1, 2020: \$10.65
- Beginning January 1, 2021: \$11.35
- Beginning January 1, 2022: \$12.00

Annual Adjustment of the Standard Minimum Wage

The Workforce Opportunity Wage Act requires the State Treasurer every January, beginning in 2019, to adjust the standard minimum wage by an amount that reflects the average annual percentage change in the Consumer Price Index for the most recent five-year period for which data are available. An annual increase may not exceed 3.5%. ("Consumer price index" means

the most comprehensive index of consumer prices available for the Midwest region from the Bureau of Labor Statistics of the United States Department of Labor.) The Wage and Hours Division of the Department of Licensing and Regulatory Affairs will have to post the adjusted minimum wage on its website by February 1 of the year it is calculated, and the wage will be effective beginning April 1 of that year. A scheduled increase in the minimum wage will not take effect if the unemployment rate for this State is 8.5% or greater for the year before the year of the prescribed increase.

Under the initiated law, the State Treasurer every October, beginning in 2022, will have to calculate an adjusted minimum wage to increase it by the rate of inflation. The increase will have to be calculated by multiplying the applicable minimum wage by the 12-month percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, or a successor index, for the most recent 12-month period for which data are available. The adjusted minimum wage will have to be published on November 1 of the year it is calculated, and the wage will be effective beginning January 1 of the next year. As is currently the case under the Workforce Opportunity Wage Act, a scheduled increase in the minimum wage will not take effect if the unemployment rate for the State is 8.5% or greater for the year before the year of the prescribed increase.

Minimum Wage Increase for Tipped Employees

Under the Workforce Opportunity Wage Act, for an employee who receives gratuities in the course of his or her employment, the minimum wage is 38% of the standard minimum wage, if all of the following conditions are met:

- The employer pays any shortfall if the gratuities plus the minimum wage do not equal or exceed the standard minimum wage.
- The gratuities are proven gratuities as indicated by the employee's declarations for purposes of the Federal Insurance Contributions Act.
- The employee was informed by the employer of these provisions.

The initiated law specifies that the minimum wage for an employee who receives gratuities in the course of his or her employment applies if all of the following conditions are met:

- The gratuities equal or exceed the difference between the tipped employee minimum wage and the standard minimum wage prescribed under the initiated law.
- The gratuities are proven gratuities as indicated by the employee's declarations for purposes of the Federal Insurance Contributions Act.
- The entirety of the gratuities are retained by the employee who receives them, except as voluntarily shared with other employees who are directly or indirectly part of the chain of service and whose duties are not primarily managerial or supervisory.
- The employee was informed by the employer of these provisions in writing, at or before the time of hire, and gave written consent.

The initiated law retains the 38% rate through December 31, 2018, and increases the minimum wage as follows:

- Beginning January 1, 2019: 48%.
- Beginning January 1, 2020: 60%.
- Beginning January 1, 2021: 70%.
- Beginning January 1, 2022: 80%.
- Beginning January 1, 2023: 90%.
- Beginning January 1, 2024: 100%.

Gratuities will remain property of the employee who receives them, except under a valid and voluntary tip sharing agreement, regardless of whether the employer pays the lower tipped hourly wage or the standard minimum hourly rate established under the initiated law. Gratuities and service charges paid to an employee are in addition to, and may not count towards, wages due to the employee. An employer will have to provide employees and consumers written notice of its plan to distribute service charges, and will have to keep records showing compliance with tipped employee minimum wage provisions for at least three years from the date of employee's last pay period.

Other Provisions

Except as otherwise provided, the initiate law supersedes any act or parts of acts inconsistent with or in conflict with the law, but only to the extent of such inconsistency or conflict. The initiated law does not repeal, abrogate, amend, limit, modify, supersede or otherwise affect Public Act 166 of 1965, Michigan's prevailing wage law (which was repealed under Public Act 171 of 2018), or any other prevailing wage law.

Any reference in any law to the Workforce Opportunity Wage Act, or to the State minimum wage law is considered to be a reference to the initiated law.

The initiated law also omits a provision of the Workforce Opportunity Wage Act enacted in 2017 that specifies that the Act does not apply to junior ice hockey players who is a member of a regional, national, or international junior ice hockey league.

Legislative Analyst: Jeff Mann

BACKGROUND

Under Article II, Section 9 of the State Constitution, the people of the State have the power to propose laws through the initiative. Invoking the initiative requires petitions signed by at least 8% of the total vote cast for all candidates for Governor at the previous gubernatorial election. If sufficient signatures are obtained, the Legislature must enact or reject the proposed law without change within 40 session days after receiving the petition. If the Legislature does not enact the proposed law within that time period, the law must be submitted to the people for approval or rejection at the next general election. An initiated law is not subject to the Governor's veto power.

In September 2017, a group called Michigan One Fair Wage submitted to the Secretary of State an initiative petition form to increase the minimum wage, and the Board of State Canvassers approved the form. In May 2018, signed petitions were submitted to the Bureau of Elections, in the Department of State. In August 2018, the four-member Board of State Canvassers voted three-to-zero (with one member absent) to certify the petition.

The Michigan Senate and House of Representatives received the petition from the Secretary of State on August 27, and both approved it on September 5. The petition then was filed with the Secretary of State and became Public Act 337 of 2018, with an effective date of the 91st day after the Legislature adjourns sine die.

FISCAL IMPACT

State & Local Government Labor Costs

The initiated law will have an indeterminate fiscal impact on State and local government. Labor costs associated with State and local government employees earning above the Federal

minimum wage of \$7.25, but below the new minimum wage, will increase. Relatively few State employees will be affected directly by these increased wages. Costs for employees paid by the Department of Health and Human Services will increase. By the time the increase is fully implemented, these costs will be in the tens of millions of dollars.

Department of Licensing and Regulatory Affairs

The initiated law will have a negative fiscal impact on the Department of Licensing and Regulatory Affairs primarily because of communications-related expenses, including the publication of required notices and materials. An additional FTE may be required depending upon the number of inquiries received regarding the policy change.

State & Local Revenue

Analyses of minimum wage increases and tax revenue effects in Pennsylvania suggest that the initiated law potentially will result in a minor increase in State and local income tax revenue, as well as sales tax revenue. A change in business practices, such as decreased hiring for minimum wage positions, will offset a portion of this increase, but the State and income tax-collecting local governments likely will see a minor net increase in tax revenue.

Fiscal Impact on the Department of Health and Human Services (DHHS)

An increase in the minimum wage will have a direct impact on wages paid directly and indirectly by the DHHS to Adult Home Help (AHH) and behavioral health direct care workers. The AHH workers are reimbursed directly by the State through Medicaid payments. The behavioral health direct care workers are reimbursed by the Prepaid Inpatient Health Plans (PIHPs). Boilerplate language directs that any wage increases be a part of the actuarial soundness rate-setting process for PIHPs, so a minimum wage increase will increase wages for many direct care workers, thus increasing PIHP costs, which will result in an increase in reimbursement by the State to the PIHPs.

There will be a more general secondary effect of a minimum wage increase tied to cash assistance. The Family Independence Program (FIP) has an income disregard, so as a recipient's income increases, his or her FIP payment decreases, leading to a reduction in FIP costs.

There also is the potential for a reduction in Medicaid costs as individuals whose income increases may exceed Medicaid income limits or shift from traditional Medicaid to expansion Medicaid (with a lower State match rate), but there is no clear, direct way to estimate those savings, so they are indeterminate.

Adult Home Help

The vast majority of Adult Home Help workers earn the minimum wage. The minimum wage will be increased each January 1, leading to increased wages for Adult Home Help workers, who are paid by the State's Medicaid program. The fiscal impact would be based on a blended wage increase as the fiscal year starts each October 1. For instance, the minimum wage would be \$10.00 per hour during calendar year 2019 and \$10.65 per hour in calendar year 2020, compared to the current \$9.25 per hour. During fiscal year (FY) 2019-20, the cost would be based on a wage increase of \$0.75 per hour (\$10.00 per hour less the current \$9.25 per hour) from October 1, 2019, to December 31, 2019, and a wage increase of \$1.40 per hour (\$10.65 per hour less the current \$9.25 per hour) from January 1, 2020, to September 30, 2020.

The estimated fiscal impact of the wage increase on the State's Adult Home Help program is as follows:

Additional AHH Costs Compared to Current FY 2018-19 Appropriations (in millions)		
	Gross	GF/GP
FY 2018-19	\$ 16.9	\$ 5.8
FY 2019-20	37.1	13.0
FY 2020-21	57.8	20.2
FY 2021-22	77.6	27.1
FY 2022-23	82.5	28.8

Behavioral Health Direct Care Workers

Although behavioral health direct care workers are not employed directly by the DHHS, boilerplate language in the DHHS budget requires that any wage increases resulting from State or Federal laws that affect direct care workers be included as a variable in the calculation of the actuarially sound rates paid to the PIHPs. Therefore, the minimum wage increase may result in a larger increase in the actuarially sound rates than might have occurred without the increase in the minimum wage. As a result of Public Act 107 of 2017, direct care workers received a \$0.50 per hour wage increase, bringing the current wage floor for direct care workers to \$9.75 per hour compared to the State minimum wage of \$9.25 per hour. The majority of direct care workers earn somewhere between the current wage floor of \$9.75 per hour, and the January 1, 2022, wage floor of \$12.00 per hour. The estimated fiscal impact of the wage increase on behavioral health direct care workers is as follows:

Additional PIHP Costs Compared to Current FY 2018-19 Appropriations (in millions)		
	Gross	GF/GP
FY 2018-19	\$ 3.0	\$ 1.1
FY 2019-20	11.8	4.2
FY 2020-21	40.8	14.5
FY 2021-22	92.7	33.0
FY 2022-23	107.1	38.1

Family Independence Program

Increased wages are likely to reduce costs for the Family Independence Program (FIP) as income is a component in calculating FIP benefits. One consideration that factors into the fiscal estimate of a minimum wage increase is the distribution of income for those on public assistance. Based on a 2016 Senate Fiscal Agency *State Notes* article that addresses public assistance benefits (in aggregate) and a minimum wage increase, most public assistance benefits are received by people who have less than \$1 in adjusted gross income (using Michigan income tax return data). Since these people are not participants in the labor force because they are likely elderly and/or disabled, any increase in minimum wage will not affect the FIP benefits for these individuals. Based on the data in that article, a 3.5% FIP caseload decline is a reasonable estimate for a \$1 increase in the minimum wage. The table below displays the estimated savings from a minimum wage increase. These FIP savings estimates reflect caseload changes and factor in mid-fiscal year minimum wage increases relative to current FIP expenditures. The estimates all are General Fund/General Purpose (GF/GP) or Temporary Assistance for Needy Families funding, which is equivalent to GF/GP as a funding source for FIP benefits:

Estimated FIP GF/GP Savings From Minimum Wage Increase (in millions)	
Fiscal Year	Total FIP Savings
2018-19	\$ (1.4)
2019-20	(2.5)
2020-21	(3.8)
2021-22	(4.9)
2022-23	(5.3)

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.